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14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
16 SOUTHERN DIVISION

17 UNITED STATES OF AMERICA,	)	CASE NO. SA CR 08-251-DOC
	)	
18 PLAINTIFF,	)	
	)	
19 V.	)	<b>GOVERNMENT'S OPPOSITION TO</b>
	)	<b>DEFENDANT'S MOTION TO SUPPRESS</b>
20 TAN DUC NGUYEN,	)	<b>EVIDENCE</b>
	)	
21 DEFENDANT.	)	DATE: January 19, 2010
	)	TIME: 9:00 a.m.
22 _____	)	
23		

24 **OVERVIEW**

25 Defendant has moved this Court to issue an order suppressing  
26 certain evidence seized by state law enforcement agents, pursuant

1 to three search warrants that were issued by a magistrate judge  
2 of the Superior Court of California.

3 On October 26, 2006, Special Agent Shannon Williams of the  
4 California Department of Justice submitted an affidavit to a  
5 magistrate judge of the Superior Court of California for a  
6 warrant to search Defendant's home and campaign headquarters for  
7 the purpose of seizing property that was, inter alia, used as the  
8 means of committing a felony and tended to show that a felony had  
9 been committed. Specifically, Agent Williams was investigating  
10 the source of an intimidating, Spanish-language letter that had  
11 been mailed to registered voters in Orange County. In support of  
12 the affidavit for search warrant, Agent Williams executed a  
13 statement of probable cause that the drafting and sending of the  
14 letter constituted violations of Sections 18502 (interference  
15 with voters), 18540 (use of tactic of coercion or intimidation),  
16 and 18543 (challenging right to vote without probable cause) of  
17 the California Election Code.

18 The English translation of the letter, as Defendant  
19 acknowledges in his brief to this Court, advises the recipient:

20 You are informed that if your residence in  
21 this country is illegal or if you are an  
22 immigrant, voting in a federal election is a  
23 crime that may result in imprisonment, and  
24 you will indeed be deported for voting  
25 without having the right to do so.

26 (See Def.'s Mot. at 5:16-20).

1 For the purposes of this response brief, the United States  
2 generally accepts the facts as Defendant presents them in his  
3 motion to suppress.

4 **ARGUMENT**

5 The challenged search warrants were issued based upon  
6 affidavits that provided the magistrate with a substantial basis  
7 for determining the existence of probable cause, and the state  
8 law enforcement agents' reliance upon those warrants to search  
9 Defendant's property and seize evidence was objectively  
10 reasonable. Consequently, the magistrate had probable cause to  
11 issue search warrants for Defendant's properties, and even if  
12 there was not, the good faith exception applies and the motion to  
13 suppress should be denied. See United States v. Leon, 468 U.S.  
14 897, 925 (1984); United States v. Crews, 502 F.3d 1130, 1133 (9th  
15 Cir. 2007).

16 A. THERE WAS A SUBSTANTIAL BASIS FOR THE MAGISTRATE  
17 TO FIND PROBABLE CAUSE OF VIOLATIONS OF THE  
CALIFORNIA ELECTION CODE

18 It is settled law within the Ninth Circuit that "[a]  
19 magistrate judge's finding of probable cause is entitled to great  
20 deference and [the Ninth Circuit Court of Appeals] will not find  
21 a search warrant invalid if the magistrate judge had a  
22 substantial basis for concluding that the supporting affidavit  
23 established probable cause." United States v. Clark, 31 F.3d  
24 831, 834 (9th Cir. 1994); See also, United States v. Terry, 911  
25 F.2d 272, 275 (9th Cir. 1990) (observing that in "borderline  
26

1 cases, preference will be accorded to warrants and to the  
2 decision of the magistrate issuing it").

3 In the present case, Agent Williams - - who has been a peace  
4 officer in the State of California for more than eleven years and  
5 spent at least four of those years conducting criminal  
6 investigations for the California Department of Justice - -  
7 swore out an affidavit and statement of probable cause that  
8 (1) described numerous complaints from citizens and community  
9 organizations who received the Spanish-language letter,  
10 (2) included a statement from the owner of a mass mailing service  
11 who acknowledged sending out 14,000 copies of the letter on  
12 behalf of a client known to him as Mark Lam, and (3) described a  
13 telephone conversation between Defendant Nguyen and the owner of  
14 the mailing service where Defendant requested that the mailing of  
15 the letters be expedited. The affidavit also included a copy of  
16 the Spanish-language letter and an unofficial translation of the  
17 letter.

18 As Defendant acknowledges in his brief, the letter advises  
19 the recipients that voting in this country is a federal crime if  
20 one is an immigrant. This assertion is untrue; there is no  
21 federal law that prohibits immigrants who have become naturalized  
22 citizens from voting. Indeed, the current Governor of California  
23 is an immigrant who has the right to vote as a naturalized  
24 citizen.

25 Section 18543 prohibits challenging a person's right to vote  
26 without probable cause and provides that every person "who

1 **fraudulently advises any person that he or she is not eligible to**  
2 **vote** . . . is punishable by imprisonment in county jail for not  
3 more than 12 months or in the state prison. [And] every person  
4 who conspires to violate [this provision] is guilty of a felony."  
5 CAL. ELEC. CODE § 18543 (1994)(emphasis added). The agent's  
6 affidavit presented evidence that numerous people received copies  
7 of the letter that asserted that immigrants are not allowed to  
8 vote, as well as evidence showing that Defendant was working in  
9 concert with other individuals to draft and disseminate the  
10 letter. Those facts establish a substantial basis for the  
11 magistrate to conclude that Agent Williams' affidavit established  
12 probable cause that the creation and dissemination of the letter  
13 constituted a violation of Section 18543 and that a search of  
14 Defendant's home and campaign office would reveal property that  
15 was used as a means of committing a felony and tends to show that  
16 a felony had been committed. See United States v. Crews, 502  
17 F.3d 1130, 1136 (9th Cir. 2007)(holding that "[f]or probable  
18 cause, an affidavit must establish a reasonable nexus between  
19 the crime or evidence and the location to be searched"); See  
20 also United States v. Pitts, 6 F.3d 1366, 1369 (9th Cir.  
21 2007)(holding that "[i]t need only be reasonable to seek the  
22 evidence at the location indicated in the affidavit").

23 Similarly, the agent's affidavit also established a  
24 substantial basis for the magistrate to find probable cause that  
25 the letter and its dissemination violated Section 18540, which  
26 prohibits intimidation with respect to voting. The letter warns

1 the recipients of the letter that there is a new computer system  
2 that the government of the United States allegedly implemented to  
3 verify the names of all new registered parties who vote in the  
4 elections of October and November 2006 and that organizations who  
5 are opposed to immigration might request information from the  
6 computer system. The letter cites no authority for such claims,  
7 and in a copy of an email message that the agent provided to the  
8 state-court magistrate, Defendant concedes, "I don't know about  
9 the part that states a new government computer system." (See  
10 Def.'s Mot., Ex. A, p. 10).

11 In rejecting a defendant's argument that the type of  
12 intimidation envisioned by the proscription of Section 18540 must  
13 be defined as "cowed, bulldozed, bullied and/or browbeaten," a  
14 California state appellate court observed,

15 [w]e have learned in our modern,  
16 advertisement-oriented society that subtle  
17 manipulation and suggestion can be a forceful  
and effective form of influence on our  
actions.

18 Hardeman v. Thomas, 208 Cal. App.3d 153, 171 (1989).<sup>1</sup> The  
19 Agent's affidavit included information relating to numerous  
20 people who complained to the state Attorney General that they had  
21 received the letter and were either threatened or intimidated by  
22 its content. These facts, in light of the Hardeman court's  
23 interpretation of the breadth and scope of Section 18540's  
24

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25 <sup>1</sup> The court in Hardeman was interpreting Section 29630,  
26 which is the predecessor to Section 18540, and the language of  
the two sections is identical.

1 prohibition against voter intimidation also provided a  
2 substantial basis for the magistrate's finding of probable cause  
3 that crimes had been committed.

4 B. THE LAW ENFORCEMENT AGENTS' RELIANCE UPON THE  
5 SEARCH WARRANTS TO SEARCH DEFENDANT'S PROPERTY AND  
6 SEIZE EVIDENCE WAS OBJECTIVELY REASONABLE

7 As the Defendant concedes in his brief, the United States  
8 Supreme Court has ruled that

9 reliable physical evidence seized by officers  
10 reasonably relying on a warrant issued by a  
11 detached and neutral magistrate leads to the  
12 conclusion that such evidence should be  
13 admissible in the prosecution's case in  
14 chief.

15 United States v. Leon, 468 U.S. 897, 913 (1984). The Supreme  
16 Court further ruled that the evidence seized pursuant to a search  
17 warrant will be admissible in the prosecution's case even if it  
18 is later determined that there was no probable cause for issuance  
19 of the search warrant.

20 In creating this "good faith exception for searches  
21 conducted pursuant to warrants," the Supreme Court explained that  
22 suppression "remains an appropriate remedy if the magistrate or  
23 judge in issuing a warrant was misled by information in an  
24 affidavit that the affiant knew was false." Id. at 925.

25 Defendant, however, has presented no evidence that Agent Williams  
26 either provided false evidence in the affidavit or knew of any  
false evidence in the affidavit that was presented to the state  
court magistrate. Moreover, Defendant does not even contend that  
the affidavit contained any false evidence. Instead, defendant

1 seeks suppression based upon his contention that the magistrate  
2 erred in his probable cause finding. Defendant cites no legal  
3 authority for the relief he seeks.

4 "In the absence of an allegation that the magistrate  
5 abandoned his detached and neutral role, suppression is  
6 appropriate only if the officers were dishonest or reckless in  
7 preparing their affidavit or could have not have harbored an  
8 objectively reasonable belief in the existence of probable  
9 cause." Leon, 468 U.S. at 926. As discussed in above, there was  
10 a substantial basis for the magistrate to find probable cause.  
11 It necessarily follows, therefore, that the police officer's  
12 reliance upon the state court magistrate's finding was  
13 reasonable. Furthermore, as the Supreme Court observed, "[i]n  
14 the ordinary case, an officer cannot be expected to question the  
15 magistrate's probable-cause determination or his judgement that  
16 the form of the warrant is technically sufficient." Id. at 921.  
17 See also Stone v. Powell, 428 U.S. 465, 498 (1976)(commenting  
18 that "once the warrant issues, there is literally nothing more  
19 the policeman can do in seeking to comply with the law") (Burger,  
20 C.J., concurring).

21 Pursuant to the Supreme Court's ruling in Leon, the Ninth  
22 Circuit has held that "if there is a colorable argument that the  
23 search [pursuant to a warrant] was supported by probable cause,  
24 the officer's reliance on the search warrant was objectively  
25 reasonable." United States v. Crews, 502 F.3d 1130, 1136 (9th  
26 Cir. 2007). In recognition of the low threshold it established



1 for applying the good faith exception (i.e., "affidavit must  
2 establish at least a colorable argument for probable cause"), the  
3 Ninth Circuit further explained that, "[t]his ends the inquiry  
4 without having to belabor the issue of whether the affidavit  
5 stated probable cause." Id.

6 **CONCLUSION**

7 The record in the present case clearly establishes that the  
8 magistrate had probable cause to issue search warrants for  
9 Defendant's properties. Moreover, even if the magistrate's  
10 finding was in error, the good faith exception applies to the  
11 searches and seizures of property that were conducted pursuant to  
12 the search warrants. Accordingly, the motion to suppress should  
13 be denied.

14 Dated: January 8, 2010

Respectfully submitted,

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